

## CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number \_\_\_\_\_

Meeting Type: Regular

Meeting Date: 2/13/2014

Action Requested By:  
Legal

Agenda Item Type  
Resolution

Subject Matter:

Development Agreement with RCP Merchants Walk, LLC.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Development Agreement between the City of Huntsville and RCP Merchants Walk, LLC.

**Note: If amendment, please state title and number of the original**

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: 2/13/2014

RESOLUTION NO. 14-\_\_\_\_\_

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Development Agreement between the City of Huntsville and RCP Merchants Walk, LLC, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Development Agreement between the City of Huntsville, Alabama, and RCP Merchants Walk, LLC," consisting of sixteen (16) pages including Exhibits A and B, and the date of February 13, 2014, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 13th day of February, 2014.

\_\_\_\_\_  
President of the City Council of  
the City of Huntsville, Alabama

APPROVED this the 13th day of February, 2014.

\_\_\_\_\_  
Mayor of the City of  
Huntsville, Alabama

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**DEVELOPMENT AGREEMENT**

**by and between**

**THE CITY OF HUNTSVILLE**

**and**

**RCP MERCHANTS WALK, LLC**

**Dated: February \_\_, 2014**

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\_\_\_\_\_  
President of the City Council of the  
City of Huntsville, Alabama  
Date: \_\_\_\_\_

## **DEVELOPMENT AGREEMENT**

This Development Agreement (this "Agreement") is made and entered into on and as of this \_\_\_\_\_ day of February \_\_\_\_\_, 2014 (the "Effective Date"), by and between the City of Huntsville, a municipal corporation under the laws of the State of Alabama (the "City"), and RCP Merchants Walk, LLC, an Alabama limited liability company ("Company").

### **WITNESSETH**

**WHEREAS**, Company has acquired or will acquire various parcels of real property located in and around an area within the City at the intersection of Memorial Parkway SW and Bob Wallace Avenue SW more particularly described on Exhibit A hereto (the "Development Area") for development of a mixed-use commercial project consisting of an approximately 42,000 square foot grocery store to be operated and occupied by Whole Foods Market Group, Inc., or by an affiliate thereof ("Whole Foods"), as a "Whole Foods" grocery store (the "Grocery Store"), a one story, two level, parking garage containing approximately 254 spaces (the "Parking Facility"), and approximately 46,000 square feet of restaurants and various other commercial and retail improvements (the "Additional Commercial Facilities" and, together with the Grocery Store and the Parking Facility, the "Project"); and

**WHEREAS**, as part of its development of the Project, the Company will be constructing and installing certain public roadway improvements to connect Merchants Walk to Bob Wallace Avenue SW, which such improvements are more particularly described on Exhibit B hereto (the "Public Roadway Connector"); and

**WHEREAS**, in connection with the agreements herein made, the City will cause to be constructed a traffic signal on Bob Wallace Avenue at the Project Roadway Connector following completion of the Public Roadway Connector; and

**WHEREAS**, the Development Area is situated in and around an area highly suited for important urban expansion, redevelopment and renewal, and contains key parcels along Memorial Parkway that are integral to the City's ongoing efforts to facilitate redevelopment and improved commerce, public entertainment and quality of life improvements along the entire Memorial Parkway Corridor; and

**WHEREAS**, the development of the Grocery Store and the other components of the Project is expected to be a major catalyst for the expansion, redevelopment and renewal efforts described above along the Memorial Parkway Corridor; and

**WHEREAS**, in order to support and facilitate the development and expansion of the Memorial Parkway Corridor, substantial public parking will be required within and around the Development Area, though adequate funding for such improvements is not included in the City's near or long term capital plans; and

**WHEREAS**, it is estimated that the capacity of the Parking Facility will service a material portion of the public parking demand in the vicinity of the Development Area over the near and reasonably foreseeable future, and the Company has offered to lease to the City all

spaces within the Parking Facility for a term of twenty-five (25) years as more particularly described herein; and

**WHEREAS**, the City has determined that it can satisfy the public parking needs described above on a more efficient and less costly basis by renting spaces within the Parking Facility at the annual rental rates herein described versus financing, designing, constructing, operating, insuring, and maintaining the Parking Facility directly, and, further, that as anticipated development along the Memorial Parkway Corridor occurs the cost and difficulty of providing sufficient public parking are likely to increase.

**NOW THEREFORE**, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**ARTICLE I**  
**DEVELOPMENT OF THE GROCERY STORE, PUBLIC ROADWAY CONNECTOR, AND**  
**PARKING FACILITY**

1.1 Grocery Store.(a) The Company hereby covenants and agrees to use its commercially reasonable best efforts to design, develop, and construct the Grocery Store within the Development Area. The Company has represented to the City that commencement of construction (hereinafter defined) of the Grocery Store shall occur on or before August 31, 2014 (the "Grocery Store Commencement Deadline").

(b) In the event commencement of construction of the Grocery Store by August 31, 2014 is delayed due to events of force majeure, the Grocery Store Commencement Deadline shall be extended by the time of such delay, though in no event beyond December 31, 2014.

(c) As used in this Agreement, "commencement of construction" shall be deemed to have occurred at such time as, with respect to the facility to be constructed, the Company has caused to be poured and completed the foundation and all footings; and "force majeure" means acts of the public enemy, acts of any government in either its sovereign or proprietary capacity (other than acts taken by the City in accordance with this Agreement), fires, floods, hurricanes, epidemics, quarantine restrictions, freight embargoes, or unusually severe weather (not including normal seasonal inclement weather).

1.2 Public Roadway Connector. The Company hereby covenants and agrees to use its commercially reasonable best efforts to design, develop, construct and install the Public Roadway Connector in accordance with City zoning and other applicable City public roadway standards. The City shall accept public dedication of the Public Roadway Connector at the election of the Company provided the Public Roadway Connector is designed and constructed in accordance with this Section 1.2.

1.3 Parking Facility. (a) The Company hereby covenants and agrees to construct and develop the Parking Facility within a commercially reasonable period of time. The Parking Facility shall consist of not less than 254 spaces (unless a lesser number is agreed upon in the Parking Lease hereinafter defined and described), shall be constructed in accordance with all applicable City standards, and shall contain such other features as more particularly described in

the Parking Lease. The City shall have the right to review and approve (such approval not to be unreasonably withheld, conditioned or delayed) the plans and specifications for construction of the Parking Facility prior to commencement of construction thereof.

(b) The Parking Facility shall be designed, developed, constructed, maintained, insured and operated at the sole cost and expense of the Company. The only financial obligation of the City respecting the Parking Facility shall be the payment of Rent under the Parking Lease.

1.4 Project Coordinators. Each of the City and the Company agree to designate one or more project coordinators to monitor and coordinate the acquisition, design, permitting, and construction of the Grocery Store, the Public Roadway Connector and the Parking Facility.

1.5 Traffic Signal. The City agrees to install a reasonable traffic signal on Bob Wallace Avenue and the Project Roadway Connector upon completion of approximately 100 feet of the entry to the Public Roadway Connector by the Company and upon the Company having obtained a grading and building permit for the Parking Facility and the Grocery Store and upon delivery of a certificate of occupancy for the new bank building that is to be part of the Project.

1.6 Approvals. The City agrees to use reasonable efforts to facilitate the processing of City approvals for the construction and development of the Project, it being the understanding of the parties hereto that nothing in this Section 1.6 or elsewhere in this Agreement is, or shall be deemed to be, an agreement of the City to waive any City approvals required for the Project.

## ARTICLE II REPRESENTATIONS AND WARRANTIES

### 2.1 Representations and Warranties of the City.

(a) The City is a municipal corporation under the laws of the State of Alabama, and the execution, delivery and performance of this Agreement has been duly authorized by the governing body of the City.

(b) Neither the execution and delivery of this Agreement, nor the performance hereof, by the City requires any consent of, filing with or approval of, or notice to, or hearing with any person or entity, and any governmental or quasi-governmental authority, whether domestic or foreign, which has not been obtained.

(c) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by the City, to the knowledge of the City, violates, constitutes a default under or a breach of (i) any agreement, instrument, contract, mortgage or indenture to which the City is a party or to which the City or its assets are subject, or (ii) any judgment, decree, order, ordinance, rule, regulation, consent or resolution applicable to the City or any of its assets.

(d) There is not now pending nor, to the knowledge of the City, threatened, any litigation affecting the City which questions (i) the validity of the City, (ii) the officers of the

City or the manner in which any were appointed or elected to such positions, or (iii) the subject matter of this Agreement.

## **2.2 Representations and Warranties of Company.**

(a) The Company is duly organized and validly existing as a corporation under the laws of the State of Alabama, and has duly authorized its execution, delivery and performance of this Agreement.

(b) Neither the execution and delivery of this Agreement, nor the performance hereof, by the Company requires any consent of, filing with or approval of, or notice to, or hearing with any person or entity or other owner of the Company, as well as any other affiliate of the Company, and any governmental or quasi-governmental authority, whether domestic or foreign), which has not been obtained.

(c) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by the Company, to the knowledge of the Company, violates, constitutes a default under or a breach of (i) the Company's articles of incorporation, bylaws, or other organizational documents of the Company, (ii) any agreement, instrument, contract, mortgage or indenture to which the Company is a party or to which the Company or its assets are subject, or (iii) any judgment, decree, order, ordinance, rule, regulation, consent or resolution applicable to the Company or any of its assets.

(d) There is not now pending nor, to the knowledge of the Company, threatened, any litigation affecting the Company which questions (i) the validity or organization of the Company, (ii) the officers of the Company or the manner in which any were appointed or elected to such positions, or (iii) the subject matter of this Agreement.

## **ARTICLE III PARKING LEASE**

3.1 **General.** (a) It is the understanding and agreement of the City and the Company that all spaces within the Parking Facility (collectively, the "Parking Spaces") shall be leased to the City pursuant to a lease agreement (the "Parking Lease") to be developed and executed between the City and the Company. The parties hereto agree to use their commercially reasonable best efforts to negotiate in good faith the terms and provisions of the Parking Lease, which such Parking Lease shall be executed and delivered on or before March 31, 2014.

(b) The Parking Lease shall contain mutually acceptable terms respecting the payment of rent ("Rent") by the City, as follows:

(i) At such time as the Company shall have provided (1) evidence reasonably satisfactory to the City that the Company has acquired fee simple title to the Development Site subject only to ad valorem property taxes for the current tax year, and (2) a fully executed copy of the lease for the Grocery

Store with the counterparty being Whole Foods, and upon the Company having obtained a grading and building permit for the Parking Facility and the Grocery Store, the City shall pay the first installment of rent (the "First Rental Installment") to the Company in the amount of \$2,000,000.00. In the event (A) commencement of construction of each of the Parking Facility and the Grocery Store has not occurred within six (6) months of the Company's receipt of the First Rental Installment, or (B) the Grocery Store and Parking Facility Completion Date (defined below) has not occurred by January 31, 2016, the sum of \$2,000,000.00 (representing the amount of the Initial Rental Payment) shall be remitted by the Company to the City in immediately available funds. If the Grocery Store and Parking Facility Completion Date occurs by March 31, 2016, the City shall return the \$2,000,000.00 First Rental Installment to the Company (and, by way of clarification, if the Grocery Store and Parking Facility Completion Date has not occurred by March 31, 2016, the City shall forever retain the said \$2,000,000.00). The requirement of the Company to remit the sum of \$2,000,000.00 (representing the First Rental Installment) to the City shall survive the expiration or termination of this Agreement and the Parking Lease. As used in this Agreement, the "Grocery Store and Parking Facility Completion Date" shall be such date as (1) a certificate of occupancy has been delivered for each of the Grocery Store and the Parking Facility, (2) the Grocery Store is occupied and operated by the grocery store chain approved by the City in the Parking Lease, (3) the City has been given unlimited access to the Parking Facility for the purpose of exercising the City's rights under the Parking Lease, and (4) the Public Roadway Connector has been completed.

(ii) The second installment of Rent shall be an amount equal to \$1,333,333.33, and shall be due upon the Grocery Store and Parking Facility Completion Date.

(iii) The third installment of Rent shall be an amount equal to \$1,333,333.33 and shall be due at such time as a certificate of occupancy has been issued for the Additional Commercial Facilities, but in no event before the first anniversary of the Grocery Store and Parking Facility Completion Date (such date, the "Third Rental Installment Date").

(iv) All subsequent installments of Rent shall come due on such dates, and be in such amounts, as follows:

<b>Rent Due Date</b>	<b>Amount</b>
First anniversary of Third Rental Installment Date	\$1,333,333.33
Second anniversary of Third Rental Installment Date	\$1,333,333.33
Third anniversary of Third Rental Installment Date	\$666,666.67
Fourth, and each subsequent annual anniversary of Third Rental Installment Date through the term	



of the Parking Lease

\$10.00

(c) The Parking Lease shall contain such other terms and conditions as are mutually agreeable to the City and the Company including, among others, the following:

(i) Other than the obligation to make the payments of Rent as described in Section 3.1(b) hereof, the City shall have no payment obligations whatsoever respecting the Parking Facility or the Parking Spaces, whether direct or indirect, and the Company shall assume and be responsible for the full and timely payment of any and all costs of operating, maintaining, insuring, repairing, refurbishing, rebuilding, restoring, cleaning, and operating the Parking Facility, as well as all costs of utilities and all taxes on the Parking Facility.

(ii) The term of the Parking Lease shall be for 25 years commencing on the Grocery Store and Parking Facility Completion Date. During the Lease term, the City shall have the exclusive use of the Parking Spaces for automobile parking twenty-four hours a day, seven days a week; provided, the Company shall have the right to reasonably restrict use of certain Parking Spaces necessary for maintenance, repair and refurbishment of the Parking Facility.

(v) The City shall have sole discretion respecting the availability and use of the Parking Spaces, and may permit any public person or other licensees of the City to use the Parking Spaces per the sole discretion of the City. The City shall also have the right to limit or prohibit parking within the Parking Facility altogether, including during periods when the Company is in default of any of its obligations or covenants hereunder or under the Parking Lease.

(vi) The City shall be entitled to post outside and within the Parking Facility reasonable signage respecting the availability and use of Parking Spaces and related information.

(vii) The Company shall maintain and operate the Parking Facility in a commercially reasonable manner consistent, as of any time of determination, with the then-in-effect standards of operation and maintenance by the City of parking decks owned and operated by the City.

(viii) The Company shall cause the Parking Facility to be insured for hazard and fire liability up to the replacement value of the Parking Facility by an insurance company reasonably acceptable to the City.

(ix) Reasonable event of default and remedies provisions respecting (a) failure of the City to timely pay Rent when due, (b) failure of the Company to properly insure, clean, maintain, repair, refurbish and otherwise operate and

manage the Parking Facility, and (c) failure of other covenants and agreements by each of the parties to the Lease.

(x) The Company shall grant to the City, its employees, agents and independent contractors, and to City's customers and/or invitees, a nonexclusive right for the duration of the term of the Parking Lease of ingress and egress over all property owned by Company where the Parking Spaces are located and from the Parking Facility to the extent necessary for the use, operation and maintenance of the Parking Spaces, with the Company responsible for the maintenance and repair of the areas covered by such rights of ingress and egress.

(xi) The City shall have peaceful possession and occupancy and quiet enjoyment of the premises, without molestation, hindrance or disturbance by the Company or any party.

(xii) Customary representations and warranties by the Company respecting it being the true and lawful owner of and having sole legal title and interest to the Parking Facility (including the site on which it is located), the Company having good right and full power to lease the Parking Spaces to City, and the Company maintaining the City's peaceful and quiet enjoyment of the Parking Spaces and the Parking Facility.

#### ARTICLE IV TERM AND TERMINATION; ASSIGNMENT

4.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue in effect until the obligations of the parties required under this Agreement have been fully performed and discharged or such earlier time as this Agreement is terminated in accordance with the terms hereof (provided that the obligation of the Company to remit and pay the sum of \$2,000,000.00 [representing the First Rental Installment] to the City as set forth in Section 3.1(b)(i) of this Agreement shall survive the end of the term of this Agreement).

4.2 Termination. This Agreement shall terminate if (i) after their commercially reasonable good faith best efforts the parties hereto are unable to negotiate the definitive terms of, and execute and deliver, the Parking Lease by March 31, 2014, (ii) commencement of construction of the Grocery Store has not occurred by the Grocery Store Commencement Deadline, or (iii) construction of the Grocery Store is not completed and the Grocery Store is not open for business by the grocery store chain approved by the City in the Parking Lease by October 1, 2015. Upon any Termination of this Agreement, all obligations of the parties hereunder shall terminate and be of no further force or effect; provided; however, the obligation of the Company to remit and pay the City the sum of \$2,000,000.00 (representing the amount of the First Rental Installment) pursuant to Section 3.1(b)(i) hereof shall survive the termination of this Agreement.

4.3 Restrictions on Assignment; Conditions Precedent. Except as otherwise expressly set forth below in this Section 4.3, the Company shall not have the right to assign or otherwise

transfer its rights or obligations under this Agreement, and any purported assignment, transfer, encumbrance or hypothecation of this Agreement or any of the rights or obligations hereunder in violation of this Section 4.3 shall be null and void and of no force or effect. Notwithstanding the foregoing, if, and to the extent, permitted herein, the Company may transfer its rights under this Agreement only upon the satisfaction of each of the following conditions precedent:

(a) The Company shall be in compliance with all of its obligations hereunder as of the effective date of the proposed assignment, and

(b) The proposed transferee shall be subject to the City's prior approval (which such approval shall not be unreasonably withheld, conditioned or delayed), and

(c) Prior to the effective date of the proposed transfer, the Company and proposed transferee have delivered to the City an executed and acknowledged assignment and assumption agreement ("Assumption Agreement") acceptable to the City. Such Assumption Agreement shall include provisions regarding: (a) the rights and interest proposed to be transferred to the proposed transferee; (b) the obligations of the Company under this Agreement that the proposed transferee will assume; and (c) the proposed transferee's acknowledgment that such transferee has reviewed and agrees to be bound by this Agreement. The Assumption Agreement shall also include the name, form of entity, and address of the proposed transferee, and shall provide that the transferee assumes the obligations of the assigning Company to be assumed by the transferee in connection with the proposed transfer.

## ARTICLE V EVENTS OF DEFAULT AND REMEDIES

### 5.1 Event of Default by the City.

(a) Any one or more of the following shall constitute an event of default under this Agreement by the City (herein called a "City Event of Default") (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) the dissolution or liquidation of the City, or the filing by the City of a voluntary petition in bankruptcy, or the City's seeking of or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its property, or the adjudication of the City as a bankrupt, or any assignment by the City for the benefit of its creditors, or the entry by the City into an agreement of composition with its creditors, or if a petition or answer is filed by the City proposing the adjudication of the City as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code

or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within 60 days; or

(ii) Failure by the City to perform or observe any of its agreements or covenants contained in this Agreement, which failure shall have continued for a period of thirty (30) calendar days after written notice thereof from the Company, unless (A) the Company shall agree in writing to an extension of such period prior to its expiration, or (B) during such thirty (30) day period or any extension thereof, the City has commenced and is diligently pursuing appropriate corrective action, or (C) the City is by reason of force majeure at the time prevented from performing or observing the agreement or covenant with respect to which the City is delinquent.

(b) If a City Event of Default exists, the sole and exclusive remedy of the Company shall be specific performance. The Company shall not be entitled to any other damages whatsoever, including, without limitation, incidental or consequential damages, whether arising at law or in equity.

#### Section 5.2 Events of Default by the Company.

(a) Any one or more of the following shall constitute an event of default under this Agreement by the Company (herein called a "Company Event of Default") (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) at any time prior to the completion by Company of its obligations hereunder, the Company is dissolved or liquidated, or the filing by the Company of a voluntary petition in bankruptcy, or the Company seeking of or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its property, or the adjudication of the Company as a bankrupt, or any assignment by the Company for the benefit of its creditors, or the entry by the Company into an agreement of composition with its creditors, or if a petition or answer is filed by the Company proposing the adjudication of the Company as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within sixty (60) days; or

(ii) failure by the Company to perform or observe any of its agreements or covenants contained in this Agreement, which

failure shall have continued for a period of thirty (30) calendar days after written notice thereof from the City, unless (A) the City shall agree in writing to an extension of such period prior to its expiration, or (B) during such thirty (30) day period or any extension thereof, the Company has commenced and is diligently pursuing appropriate corrective action, or (C) the Company is by reason of force majeure at the time prevented from performing or observing the agreement or covenant with respect to which it is delinquent.

(b) If a Company Event of Default exists, the City may proceed to protect its rights hereunder by suit in equity, action at law or other appropriate proceedings, whether for the specific performance of any covenant or agreement of the Company herein contained.

Section 5.3 Remedies Subject to Applicable Law. All rights, remedies and powers provided in this Article V may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article V are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that the same will not render this Agreement invalid or unenforceable.

## ARTICLE VI NOTICES

6.1 Delivery of Notices. All notices, statements, demands, consents and other communications ("Notices") required or permitted to be given by any party to another party pursuant to this Agreement or pursuant to any applicable law or requirement of public authority shall be properly given only if the Notice is: (a) made in writing (whether or not so stated elsewhere in this Agreement); (b) given by one of the methods prescribed in Section 6.2; and (c) sent to the party to which it is addressed at the address set forth below or at such other address as such party may hereafter specify by at least five (5) calendar days' prior written notice:

If to the City:

City of Huntsville  
Attention: Mayor  
308 Fountain Circle  
P.O. Box 308  
Huntsville, Alabama 35804  
Fax: (256) 427-5121

With a copy to the attention of:

City of Huntsville  
Attention: City Attorney  
308 Fountain Circle  
P.O. Box 308  
Huntsville, Alabama 35804

If to Company:

RCP Merchants Walk, LLC

Attention: Manager  
918 Bob Wallace Avenue  
Huntsville, Alabama 35801

with a copy to:

Morris & Brumlow, PC  
Attention: Greg Morris  
137 Main Street  
Trussville, Alabama 35173  
Fax: 205-661-3645

6.2 Methods of Delivery. Notices may be either: (a) delivered by hand; (b) delivered by a nationally recognized overnight courier which maintains evidence of receipt; or (c) sent by facsimile transmission with a confirmation copy delivered the following day by a nationally recognized overnight courier which maintains evidence of receipt. Notices shall be effective on the date of receipt. If any Notice is not received or cannot be delivered due to a change in address of the receiving party, of which notice was not properly given to the sending party, or due to a refusal to accept by the receiving party, such Notice shall be effective on the date delivery is attempted.

## ARTICLE VII MISCELLANEOUS

7.1 Negation of Partnership. The parties specifically acknowledge that none of the parties is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership or joint venture between or among any two or more of the parties, or cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended and shall not be construed to create any third party beneficiary rights in any person who is not a party or a permitted transferee pursuant to Section 4.3; and nothing in this Agreement shall limit or waive any rights any one or more of the parties may have or acquire against any third Person with respect to the terms, covenants or conditions of this Agreement.

7.2 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any of the real property described or referred to herein, or any buildings or improvements constructed thereon, to the general public, for the general public, or for any public use or purpose whatsoever.

7.3 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any Person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

7.4 Exhibits. The Exhibits, to which reference is made herein, are deemed incorporated into this Agreement in their entirety by reference thereto.

7.5 Amendment. Except as expressly provided in this Agreement, this Agreement may be modified or amended only by a written instrument, executed by each of the parties to this Agreement.

7.6 Entire Agreement. This written Agreement and the Exhibits hereto contain all the representations and the entire agreement among the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits hereto. Neither the conduct nor actions of the parties, nor the course of dealing or other custom or practice between or among the parties or any of them, shall constitute a waiver or modification of any term or provision of this Agreement.

7.7 Ambiguity. The terms, conditions and provisions of this Agreement were agreed to in arm's length negotiations in which each Party was represented by independent counsel of its own choosing. Accordingly, in the event of any ambiguity in this Agreement, such ambiguity shall not be resolved against any Party deemed the principal draftsman of this Agreement or the provision of this Agreement at issue.

7.8 Further Assurances; Covenant to Sign Documents. Each party shall take all actions and do all things, and execute, with acknowledgment or affidavit if required, any and all documents and writings, which may be necessary or proper to achieve the purposes and objectives of this Agreement.

7.9 Governing Law. This Agreement, and the rights and obligations of the parties, shall be governed by and interpreted in accordance with the laws of the State of Alabama.

7.10 Counterpart Execution. For convenience, this Agreement may be executed by the parties in multiple counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same Agreement.

7.11 Liabilities of the City. The Company understands, acknowledges and agrees that the obligations of the City as set forth herein are limited by the limitations imposed on public bodies, municipalities and public corporations by the Constitution of the State of Alabama.

7.12 No Waiver. No consent or waiver, express or implied, by any party hereto or to any breach or default by any other party in the performance by such other party of its obligations hereunder shall be valid unless in writing, and no such consent or waiver to or of one breach or default shall constitute a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of any party to complain of any act or failure to act of any other party or to declare such other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of any party hereto shall be construed to waive or limit the need for such consent in any other or subsequent instance.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed and delivered on its behalf by its duly authorized officer, on and as of the Effective Date.

**CITY OF HUNTSVILLE**

By: \_\_\_\_\_  
Mayor

**RCP MERCHANTS WALK, LLC.,** an  
Alabama Limited Liability Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_



# EXHIBIT A

## DEVELOPMENT SITE

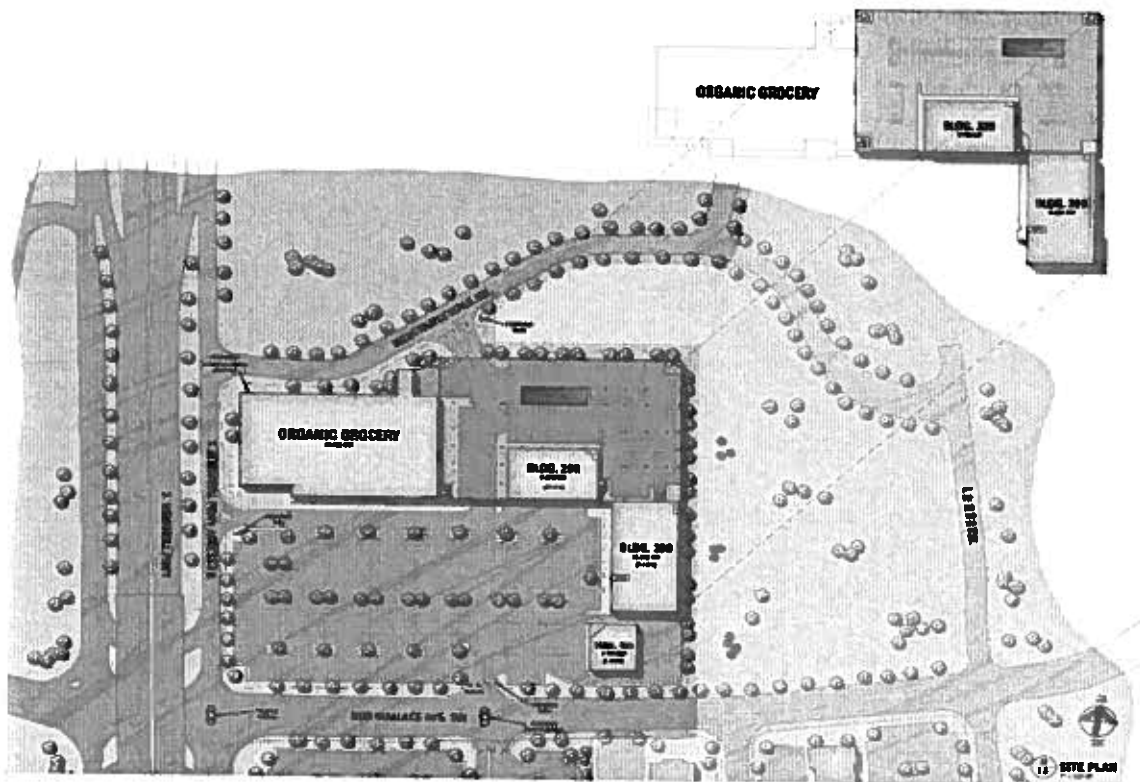
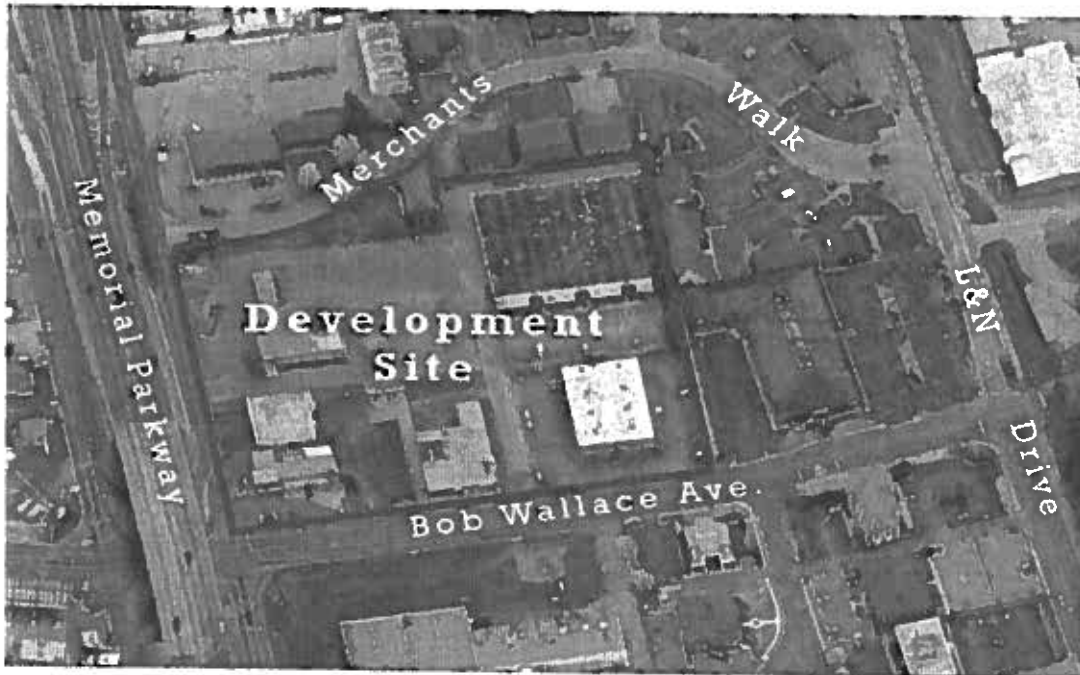
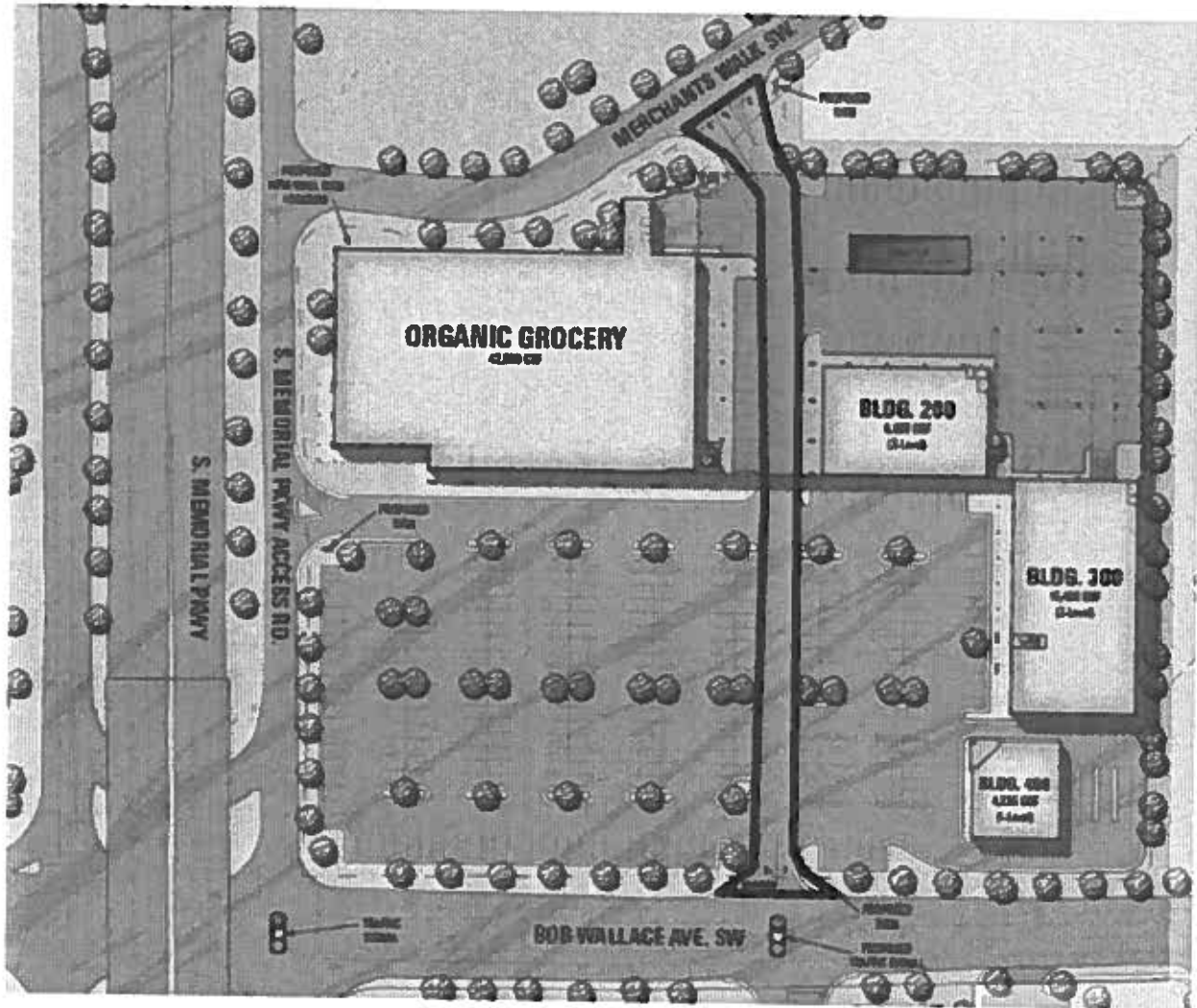


EXHIBIT B

PUBLIC ROADWAY CONNECTOR



# ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 2/13/2014

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Development Agreement for Whole Foods

Document Name: Development between the City and RCP Merchants Walk, LLC

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

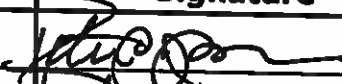

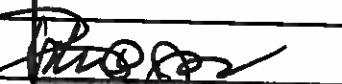
Account Number:

## Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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## Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating		2-13-14
2) Legal		2-13-14
3) Finance		
4) Originating		2-13-14
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		